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 LIBERTY LIFE ASSURANCE COMPANY OF BOSTON

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

ANITA B. CARR,

Plaintiff,

v.

LIBERTY LIFE ASSURANCE  
 COMPANY OF BOSTON, a  
 Massachusetts Corporation, and  
 PROVIDIAN BANCORP SERVICES, a  
 domestic corporation, PROVIDIAN  
 FINANCIAL HEALTH PLAN, an  
 employee benefits plan,

Defendants.

CASE NO. C 05-3190 TEH

**DECLARATION OF PAMELA E. COGAN  
 IN SUPPORT OF REPLY  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANT'S MOTION TO CONFIRM  
 ARBITRATION AWARD; AND  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANT'S OPPOSITION TO  
 PLAINTIFF'S MOTION FOR LEAVE TO  
 FILE AMENDED COMPLAINT**

Date: February 9, 2009

Time: 10:00 a.m.

Crtrm.: 12

Judge: Hon. Thelton E. Henderson

I, Pamela E. Cogan, declare:

1. I am an attorney at law licensed to practice before all courts of the State of California and the United States District Court, Northern District of California. I am a partner with the law firm of Ropers, Majeski, Kohn & Bentley, counsel of record for defendant Liberty Life Assurance Company of Boston ("Liberty"). The statements herein are of my own personal knowledge and if called to testify, I could competently testify thereto.

2. The District Court in this action granted plaintiff's "Motion to Compel Defendant Liberty Life Assurance Company [of Boston] to Attend Binding Arbitration" on June 22, 2006.

1 By stipulation dated November 6, 2007, plaintiff dismissed her claims against defendant  
 2 Providian Bancorp Services from this action, leaving Liberty and Providian Health and Welfare  
 3 Plan ("the Plan") as the only remaining defendants.

4 3. Plaintiff's claims against Liberty and the Plan were arbitrated the San Francisco  
 5 offices of JAMS/Endispute on March 26, 2008, before Hon. Eugene F. Lynch (Ret.). I attended  
 6 the arbitration, as did plaintiff Anita B. Carr, her former counsel, Steven L. Krafchick, and  
 7 Dipanwita Amar, counsel for the Plan. The arbitration lasted a half-day and all issues raised in  
 8 the civil action were addressed. Although plaintiff was afforded an opportunity to testify at the  
 9 arbitration hearing, she did not to do so.

10 4. Prior to the arbitration hearing, Liberty, plaintiff and the Plan submitted arbitration  
 11 briefs, and voluminous exhibits, including, among other things, claim file records, deposition  
 12 transcripts, declarations, the parties' disclosures and written discovery responses, and documents  
 13 that Liberty produced pursuant to protective order signed by the arbitrator.

14 5. On or about March 4, 2008, plaintiff served and lodged with the arbitrator her  
 15 opening brief, captioned, "Plaintiff's Arbitration Brief Seeking Set Aside of Releases Defense, De  
 16 Novo Review, Entertaining New Evidence, and Judgment for Plaintiff." In support of her brief  
 17 and claims against Liberty, plaintiff introduced in excess of approximately 1,000 pages of  
 18 exhibits.

19 6. On or about March 4, 2008, Liberty served and lodged with the arbitrator its  
 20 opening brief, captioned, "Liberty Life Assurance Company of Boston's Opening Arbitration  
 21 Brief." A true and correct copy of Liberty's opening brief is attached hereto as Exhibit I. In  
 22 support of its brief and defenses to plaintiff's claims, Liberty introduced in excess of  
 23 approximately 1,100 pages of exhibits.

24 7. Following the arbitration hearing, the parties also submitted post-arbitration briefs.  
 25 The last brief was filed on or about April 25, 2008. The matter was then submitted as of that date.  
 26 The parties agreed that the Arbitrator had 60 days from the date of submission to render his  
 27 opinion and award.

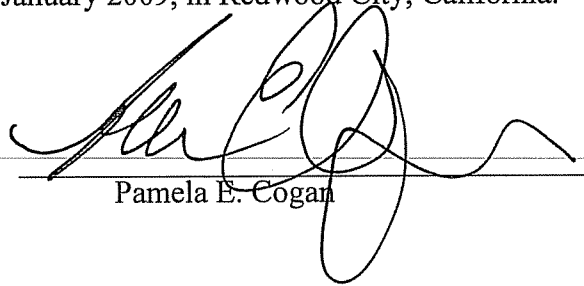
28 8. The arbitrator's award was faxed to all parties on May 6, 2008. A copy of the

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 A Professional Corporation  
 Redwood City

1 award and proof of service are attached as Exhibit F to the declaration I prepared for the motion  
2 to compel arbitration that will be heard concurrently with plaintiff's motion to amend the  
3 Arbitrator's Opinion and Decision on the same day.

4 I declare under the penalty of perjury under the laws of the United States and the State of  
5 California that the foregoing is true and correct.

6 Executed on this 20<sup>th</sup> day of January 2009, in Redwood City, California.

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